



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 6, 1998

Mr. Heberto Gonzalez, Jr.  
Person, Whitworth, Ramos, Borchers & Morales, L.L.P.  
P.O. Drawer 6668  
Laredo, Texas 78042-6668

OR98-1145

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115288.

The South Texas Workforce Development Board (the "board"), which you represent, received a request for the following information:

Names of all Texas Workforce Center employees: gender, age and ethnicity of each, plus a copy of each employee's application for employment. If the application was submitted with other supporting documents, such as a transcript or resume, copies of these documents should be submitted as well.

You contend that the requested information is excepted from disclosure pursuant to sections 552.102 and 552.117 of the Government Code. You have submitted a representative sample of the documents at issue to this office for review.<sup>1</sup>

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v.*

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

*Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. The court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

In Open Records Decision No. 455 (1987), we concluded that the following information is not protected by privacy: applicants' educational training; names and addresses of former employers; dates of employment; kind of work, salary, and reasons for leaving; names, occupations, addresses and phone numbers of character references; job performances or abilities; and names of friends or relatives employed by the governmental body. The information at issue here is similar to the information we considered in Open Records Decision No. 455 (1987). Based on the reasoning set out in that open records decision, we conclude that none of the submitted information is protected from disclosure by section 552.102.

Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 (1989) at 5. Therefore, the board may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the board must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The board may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential.

Finally, we note that a social security number may also be excepted from required public disclosure under section 552.101 in conjunction with federal law. The 1990 amendments to the federal Social Security Act, § 42 U.S.C. § 405(c)(2)(C)(viii)(I), make a social security number confidential if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented

to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Karen Hattaway". The signature is fluid and cursive, with the first name "Karen" and last name "Hattaway" clearly distinguishable.

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 115288

Enclosures: Submitted documents

cc: Mr. Jalarkin Winginghauser  
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(w/o enclosures)